



Lamoine Board of Selectmen

606 Douglas Hwy
Lamoine, ME 04605
(207) 667-2242
town@lamoine-me.gov

Minutes of September 24, 2013

Chair Jo Cooper called the meeting to order at 7:00 PM

Present were: Selectmen Bernie Johnson, Cynthia Donaldson, S. Josephine Cooper, Gary McFarland, Nathan Mason; Administrative Assistant Stu Marckoon, Town Attorney Daniel Pileggi, Planning Board members Jim Gallagher, John Holt, Chris Tadema-Wielandt; Conservation Commission member Carol Korty, Assessor Jane Fowler, Plaintiff's attorney Ed Bearor, Catherine DeTuede, Anne Curtis, Andrew Muir, Jeffrey Lamont, Gravel pit owners Paul MacQuinn and John W. Goodwin, Jr., pit owner representative Steve Salsbury, and newspaper reporter Jackie Weaver (Ellsworth American)

Meeting with attorneys re: gravel ordinance lawsuit – Town attorney Pileggi said he envisioned this meeting as a listening session and a discussion with the plaintiffs about possible alternatives. He told the board that he distributed an e-mail from Mr. Bearor outlining their bullet points.

Mr. Bearor who represents several parties in a suit against the town in regard to the gravel ordinance said they are here to discuss possible adjustments. He said he realizes that a town meeting vote is needed to amend any ordinance. He said the plaintiffs do not intend this to be seen as derogatory toward the Planning Board. He said the ordinance was drafted by the Planning Board and the concern is the impact of the ordinance on the legally licensed pits in town.

Mr. Bearor said he has drafted some revisions that could be incorporated into the potentially amended ordinance and was looking for feedback. He said the issue of monitoring wells needs to be discussed closely. He said that expense represents a taking of revenues from the pit owners who have purchased their land at great expense when previous regulations were in effect. He said the newly enacted ordinance increases the sideline setbacks by 100% from 50-feet to 100-feet. He said that has a significant impact depending on the shape of the parcel. He said they question the need for the increased setback. He said an ordinance should reasonably regulate activity and the 50-foot setback was not problematic in the previous ordinance and they would like that setback restored.

Mr. Bearor said the previous ordinance also allowed for a reduction to a 10-foot setback, and that was eliminated from the ordinance. He said the pit owners would also like that restored, and said he was not sure what harm there is.

Mr. Bearor said the new ordinance contained a 1,000 foot setback from a public water supply, and that would only potentially affect the MacQuinn parcel. Mr. MacQuinn said the current application before the Planning Board is greater than 1,000 from the Cold Spring Water Company. Mr. Bearor said the three setback items have significantly reduce the value of the gravel parcels.

Mr. Bearor said the licensing process has become the Steve Salsbury full employment act. He said the new ordinance requires a re-licensing effort every 3-years. He said once a permit is issued, it should be renewed, and if there are deficiencies in the operation at the time of renewal, those must be addressed. He said the licensing process puts the entire acquisition investment at risk every three years and creates an incredible permitting expense. He gave an analogy of having a mortgage and having to renew that every three years with the bank, and that wouldn't be fair. He said if a permit is not renewed, it's a big problem for the business.

Mr. Bearor said his clients do not oppose reasonable regulation. He said he has never seen an ordinance as onerous as Lamoine's. He said if the town accepts the changes they seek, it would still be one of the toughest ordinances in the state. He said the town should seek compliance with its ordinance, but to put a license at risk every 3-years should be revised.

Mr. Bearor said the monitoring well requirements are a burden on pit owners. He said they are costly, as they involve surveying, drilling, monitoring and reporting. He said his clients don't mind drilling a well or two or three, but one for every 5-acres is excessive. He said that is a quarry requirement. He said the town considers the land and water a valuable resource and his clients do as well. He said the ordinance needs a rational purpose. He said the monitoring wells are not necessary, and estimated that the cost per well is \$6,500. He said the newly passed ordinance has placed this burden on the renewals now before the Planning Board.

Mr. Salsbury outlined the well drilling activity and said he is presently before the Planning Board for clients seeking 9-permits. He said there are a couple of issues of concern – the well monitoring requirement being one of them. He said it would take a number of months to install the required wells, and there is no guidance in the ordinance for the water quality test. He said he's not sure what is supposed to be measured, or why. He said the second issue is the collection of 5-cents per yard for each yard excavated. He said he can't make a provision to comply with the ordinance.

Mr. Bearor said he would appreciate the Selectmen considering the terms and give some feedback. He said if the town and the pit owners could come to some sort of agreement, they could lay down the swords. Jo said she could assure Mr. Bearor that the concerns are being heard. Mr. Pileggi said it was not appropriate for him to comment at this time, but this would be a good opportunity for the board to ask questions.

Jo said she knows the Planning Board is looking at possible ordinance revisions, but she is not sure where they stand. Gary asked if the DEP requires the monitoring wells for every 5-acres. Mr. Salsbury said the wells are not required, just a 5-foot separation from the floor of the pit to groundwater. He said there are no water quality tests required by DEP. He said the pit owners do monitor the water levels and explained briefly about the wells and water levels. Gary asked if there are any issues. Mr. Salsbury said not recently, but there was a correction made in the Smith pit several years ago when excavation got too close to the groundwater.

Nathan asked what the appropriate number of wells would be. Mr. Salsbury said it could vary with pit size. Nathan asked what guideline the pit owners would be looking for. Mr. MacQuinn said as a pit floor is leveled, the well could move as the pit is excavated and restored. Nathan asked if Mr. MacQuinn was open to the system of moving monitoring wells. Mr. MacQuinn said he was. He said they currently try to locate the wells in the lowest spot. Mr. Bearor said if there needs to be a well, there ought to be some scientific basis for how many are necessary. He said the Planning Board may have gone through that, but he doesn't think so. He said reports have not shown any connection of gravel extraction and ground water quality. Jo asked how there could be an agreement on what is scientifically reasonable. Mr. Bearor said each side has professional resources and the estimates may not be very far apart. Jo said she would like to see a solution, but doesn't want a long debate about it.

Cynthia said she did not expect there would be any solution this evening. She asked about the 5-cents/yard provision, and the lack of guidance in the ordinance. Mr. Salsbury said the ordinance says the money is given to the town, but the town wouldn't accept the money. Stu said he raised the concern, because he has no answer about how to account for the money, where the money goes and who has control over it. Nathan asked if there was an objection to the 5-cent provision. Mr. Salsbury said he didn't think so. Mr. MacQuinn said in his situation he would never see the money because the pit would never be fully closed and restored in his lifetime. He said it puts the town and the pit owner in a bad position.

Mr. Pileggi said if a phased reclamation plan was approved, money could be withdrawn. A brief discussion followed. Gary asked if money was given back when phased restoration occurred, would that be OK with the pit owners. Mr. MacQuinn and Mr. Goodwin both said it would. Mr. Salsbury said he would have no problem with that.

Jo said she understands the Planning Board is working on some of the issues. Planning Board chair John Holt said the Planning Board identified, after the new ordinance was adopted, three areas to revisit. He said one was the escrow account to cover restoration, and the board continues to talk about a couple of proposals. He said there was never any discussion about requiring the restoration of the entire pit be completed before distribution of funds. He said that issue is still in discussion, and they have addressed the issues of setback, and a final draft was sent to the Selectmen. He said the setback provision would allow a 50-foot setback provided the permitted area already has a site plan review permit and the abutting property owner approves. He said the setback area must be part of the parcel with the site plan review. He said it would not apply to new pit applications, and that certain other conditions must be met. He said there is no proposal to restore the 10-foot setback provision.

Mr. Holt said the Planning Board has also addressed the appeals language. He said the gravel permit has always been a 3-year permit and that is not new in this ordinance. He said the Planning Board is compelled to grant a permit if conditions are met. He said the Planning Board is hardly arbitrary, and the risk is not capricious.

John W. Goodwin Jr. asked if the 5-cents per yard requirement is retained, would a letter of credit and / or a bond still be required with the application. Mr. Holt said the ordinance states that a letter must accompany the application stating that the pit owner has adequate funds set aside for restoration. Mr. MacQuinn said the DEP permit already requires a bond. Mr. Holt said the 5-cent provision has never been implemented. Jo asked Mr. Holt if it was correct that neither the 5-cent provision nor the renewal process are not new. Mr. Holt said that was correct.

Mr. Bearor said the ordinance requires permit renewal, and it's never been clear whether the renewal is a refresher of the existing permit or an all new application every three years. He said he's beginning to believe it's an all new process. He said he's not sure whether a renewal has been denied before, but if it were, it would be a significant problem for the pit owner. He said he has never suggested the Planning Board acted arbitrarily. He said he was concerned by the philosophy of the Planning Board, and the current board seems to be more rigorous about the gravel applications, and it could come to a different conclusion on applications. He said to force an applicant to spend \$10,000 on a risky approval process is a bad idea.

Mr. Pileggi asked if the prior ordinance had the same provisions. Mr. Bearor said he didn't dispute that that the language was there, but it's the way it is applied. He said the Planning Board requires a full blown application every three years, and there is a concern that the Board might not renew it. Jo asked if that was because of the current Planning Board makeup. She said she was puzzled about the concern if the process in the new ordinance was the same as it was before.

Code Enforcement Officer Michael Jordan said things have changed drastically. He said prior to the new ordinance a gravel pit had to go through the site plan review process which is a major undertaking. He said the gravel ordinance had not been as rigorous as Site Plan Review. He said the gravel permit process used to be quick and easy and was never a big blown thing. He said site plan review requirements were placed into the gravel permitting process, and that is a major burden on the applicant. He said it was correct that the 5-cent provision was in the previous ordinance, but never implemented as restoration was proposed in previous applications. He said that's a big difference now.

Gary asked if the renewal process were made clearer, could that move things forward. Mr. Bearor said yes. He said the gravel permit renewal process used to be simple, but now with the site plan review regulations migrating into the gravel ordinance, the process is onerous. Gary asked Mr. Jordan how often the pits are inspected. Mr. Jordan said that happens annually.

Nathan asked how much money does it cost a pit owner every three years to renew under the new ordinance. Mr. Salsbury said a 10-acre pit could run between \$7,500 and \$10,000. He said a large pit could run \$100,000 or more. Nathan asked if that was required every three years. Mr. Salsbury said potentially. He said previously there was a big expense up front and a simple review at renewal. Mr. MacQuinn used the Kittridge/Miro pit as an example. He said the new setback requirements took away

about 25% of his current 65 acres of permitted land, and that's a huge number. He said they need new hydrology testing and that has increased the cost to \$75,000 to \$100,000. He said it all appears to be about a thin layer of clay, and it still might be denied on some technicality such as beautification or aesthetics. He asked if there was something else bothering the town, it could be discussed and asked the Planning Board to tell him up front. He said they will spend a lot of money to obtain a permit and the Planning Board may say no.

Jo said the Planning Board is proposing that if a site plan review was already in place, the 50-foot setback could remain. She asked what new pits might be developed in Lamoine. Mr. MacQuinn said if you go in for a new pit with the ordinance in place, you know what to expect and he can accept that. He said he would be under the new ordinance, he has 3-years to get all the gravel out, and that's not practical.

Mr. Holt said the new ordinance has a provision on setbacks for a transition period and anyone with an existing pit could work to the 50-foot buffer. He said after the 3-years, that expires. He said the new proposed language would change that, provided site plan review was obtained prior to the new ordinance passage. He said there are 23-pits now, and there was site plan review for those parcels.

Gary said he understands there is a concern that combining 3-pits into one makes it a new pit. Mr. Holt said until March 2016 they could work to the 50-foot boundary, and with the new proposal it could remain at a 50-foot setback if it's in the site plan review area. Mr. Salsbury noted written permission from the abutter is required. A discussion followed on the setbacks to 10-feet, 50-feet and 100-feet.

Bernie noted that bullet points 2, 5 and 6 in Mr. Bearor's memorandum remain open to discussion, and there is progress on number 1 and number 3 is not an issue at this time.

Carol Korty said she has a concern about what happens. She said the proposed combination of 3-pits into one is a big issue because removing pressure from the land could have an impact on the water underneath. She said a hydrogeologist suggested the 5-acre test well requirement. He said she has terribly concerned about the risk of destroying the aquifer.

Mr. Pileggi asked Mr. Bearor about the draft he has proposed and what change he proposes to the well monitoring provisions. Mr. Bearor reviewed the draft and said he would have to send a note.

Mr. MacQuinn responded to Mrs. Korty's concerns saying the water levels in the pits have never changed and water is not disappearing despite large areas being open. He said the hydrology report never raised such an issue. He said in the past has not taken place. He said the water table might be recharged even faster with gravel removed.

Stu asked what the next step in the process would be. Mr. Pileggi said the Selectmen can do anything they want, but he needs some instruction. Cynthia said she would like to look at Mr. Bearor's proposed ordinance with the Planning Board and Mr. Pileggi.

Bernie said the boards should get together for discussion Mr. Bearor said he would get his proposed ordinance to Mr. Pileggi in a couple of days. Cynthia said it would be a scaffold for discussion.

Meeting of September 26, 2013 – Stu said he has a safety concern about a request from a resident to meet with the Selectmen. Jo said there could be some sort of time limit. Su said he would suggest that a deputy be present. After a brief discussion and input from Mr. Pileggi, the board asked Stu to talk with the Sheriff's Department about providing some level of security.

Mr. Pileggi said the Board should wait for the proposed ordinance changes from Mr. Bearor and put this item on a future agenda then decide the next step.

As the discussion evolved into potential legal strategies, Jo moved to enter executive session pursuant to 1-MRSA §405(6)(E). Gary 2nd. **Vote in favor was 5-0 at 8:15 PM. Out at 8:36 PM.**

Selectmen requested that Stu obtain copies of other gravel ordinances in respect to renewal process.

Code Enforcement Officer Mike Jordan said there will be a problem in another month when numerous permits expire. He said the pit owners will not be able to drill all the required wells within 30-days. He asked if that means he should shut down the operations. Cynthia said the pit owners should talk and bargain with the Planning Board. Mr. Pileggi suggested the Planning Board could extend the current licenses pending application review. The Selectmen said the Code Enforcement Officer and Planning Board should deal with it when it happens.

Mr. Pileggi said he would discuss that matter with Mr. Bearor.

There being no further business, the meeting adjourned at 8:43 PM

Respectfully submitted,

Stu Marckoon, Adm. Asst. to the Selectmen